

**From:** Michael Shuey  
**To:** Microsoft ATR  
**Date:** 1/28/02 10:15am  
**Subject:** Re: Proposed Microsoft anti-trust settlement

Attn. Renata B. Hesse  
Antitrust Division  
U.S. Department of Justice:

Under the Tunney Act, I wish to comment on the proposed Microsoft settlement. In particular, I would like to voice my concerns over section III D, API Disclosure.

It has been ruled (and upheld in subsequent appeal) that Microsoft has abused its monopoly power, particularly in the areas of operating system software and business applications. As long as Microsoft is able to modify the application programmer interface (API) secretly the company will always be able to prevent competing business applications from running at peak efficiency and to prevent non-Microsoft operating system code from running the latest Microsoft business software. Unless Microsoft is forced to openly publish the Windows API specification third-party developers will always be unable to compete on equal footing. A measure like section III D is necessary.

While section III D is a step in the right direction, the proposed remedy is far from an effective solution. The Windows API is one of the most complex software interfaces in use today - merely documenting it is a daunting task. With such a large degree of complexity it is quite easy to omit certain details. In the current settlement there are no provisions to handle such omissions, whether they are accidental or intentional. As the Windows API evolves (witness the changes that occur with every major new release of operating system software) it would be very easy to again recreate secret, proprietary API extensions to restore competitive edge for Microsoft business software. Without some kind of regular auditing procedure for the Windows source code, performed by a well-funded neutral third party, there is no way to guarantee that complete, accurate documentation will continue to be made available.

Unfortunately, a third-party code audit would not adequately solve the problem. Currently, according to Definition A and Definition J in the proposed settlement, the Windows API is limited to interfaces between Microsoft Middleware and Microsoft Windows, excluding APIs used by other programs or hardware device drivers. Without providing a broader definition of "API" Microsoft can easily avoid the API disclosure restrictions by merely claiming to have integrated a portion of their application software with the underlying operating system (such as in the case of Internet Explorer).

Futhermore, the definition (J) of "Microsoft Middleware" itself is problematic. The definition limits itself to particular versions of Microsoft software distributed via conventional channels. Newer versions of Microsoft software,

or versions of existing software introduced through online services, may not be counted as "Microsoft Middleware" for the purposes of this settlement, effectively allowing Microsoft to extend their API to support their software without concern for API disclosure.

Without some significant revision to the proposed settlement, I believe that little will be done to prevent Microsoft from continuing to abuse its monopoly to limit the amount of choice available to the consumer.

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Mike Shuey